

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CINCINNATI INSURANCE)	
COMPANIES,)	
)	
Plaintiff,)	Civil Action No. 05-1162
)	
v.)	Judge Lancaster
)	Magistrate Judge Caiazza
BERCURY HOMES, LTD.,)	
)	
Defendant.)	

MEMORANDUM ORDER

The Defendant's Motion to Dismiss (Doc. 7) will be granted.

The Plaintiff has brought this declaratory judgment action on the basis of diversity jurisdiction. See Compl. (Doc. 1) at ¶ 3. The Defendant, whose putative claims of liability are at issue, has stipulated and certified that the amount in controversy does not exceed the sum of \$75,000.00, and that it will reduce any judgment to that amount. See Def.'s Mot. (Doc. 7-1); see also "Certificate to Reduce Coverage" (Doc. 7-2) (contemplating "irrevocab[e] reduc[tion]" of insurance coverage to \$75,000.00 or less). The Plaintiff does not object to the Defendant's Motion, subject to the parties understanding and agreement that the court's dismissal in no way prejudices the pursuit of the declaratory judgment claims in the Court of Common Pleas of Butler County. See Pl.'s Response (Doc. 10) at 1-2.

This court previously has recognized that the stipulation contemplated above constitutes a permissible clarification of the pleadings warranting a dismissal, without prejudice to state court proceedings, for lack of federal subject matter jurisdiction. See, e.g., Orders in Hinkle, et al., v. Sears Roebuck & Co., Civ. Action No. 00-280 (Mar. 23, 2000) (Lancaster, J.; Caiazza, M.J.) (citing and quoting Gottelhrer v. State Farm Ins. Co., 1996 WL 210808, *1 (E.D. Pa. Apr. 30, 1996)).

For this reason, along with the Plaintiff's lack of objection, the Defendant's Motion to Dismiss (**Doc. 7**) is **GRANTED**, and the Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** to their being transferred to the Court of Common Pleas of Butler County, Pennsylvania. See 42 Pa. Cons. Stat. § 5103(b). The Clerk is directed to mark this case closed.

IT IS SO ORDERED on this 31st day of Jan, 2006.



Gary L. Lancaster
United States District Judge

cc:

Adam M. Barnes, Esq.
Walsh, Collis & Blackmer
707 Grant Street, Suite 1400
Pittsburgh, PA 15219

Ronald T. Elliott, Esq.
Dillon, McCandless, King, Coulter & Graham
128 West Cunningham Street
Butler, PA 16001